



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

345 COURTLAND STREET, N.E.
ATLANTA, GEORGIA 30365

MEMORANDUM

DATE: January 17, 1992

SUBJECT: Model Administrative Order by Consent for Remedial
Investigation/Feasibility Study Conducted by
Potentially Responsible Parties, Revision 2.0.

FROM: Mark M. Davis
Assistant Regional Counsel
Northern Section
Hazardous Waste Law Branch

TO: Phyllis P. Harris, Chief
Northern Section
Hazardous Waste Law Branch

The purpose of this memorandum is to provide you with comments to the Model Administrative Order by Consent for a Remedial Investigation/Feasibility (AOC for RI/FS) Study Conducted by Potentially Responsible Parties, Revision 2.0.

I have compared our current Model AOC for RI/FS with Headquarter's Model AOC for RI/FS (OSWER Directive No. 9835.3-2a) and Region IV's Model Scope of Work for RI/FS (Version 2-0) in order to provide the Region with an updated Model which reflect's HQ's mandate that PRPs are no longer allowed to perform the Baseline Risk Assessment. A majority of the modifications that I made reflect this mandate.

In addition, I changed Sections Numbers identified in the Model AOC that were incorrectly referred to in other Sections of the Model. I also clarified the language in the Stipulated Penalties Section and corrected the signature page so that Don Guinyard was named as the Director of the Waste Management Division. The modifications are set out below.

One last point that I feel should be addressed, is creating a Model AOC for RI/FS for sites that involve one or more operable units. The new Model Scope of Work (Version 2-0) does outline sections where operable units require different language that a normal Site does not, but the Model AOC for RI/FS does not have any language to guide the program on handling operable units. It is my opinion that an entirely separate Model AOC for RI/FS should be created that specifically addresses issues involved in Sites with operable units.



VII. WORK TO BE PERFORMED

1. (Page 5)

All aspects of the work to be performed by Respondent(s) pursuant to this Consent Order shall be under the direction and supervision of a qualified contractor who shall be a qualified professional engineer or geologist with expertise in hazardous site cleanup, the selection of which shall be subject to approval by EPA. Within fifteen (15) days after the effective date of this Consent Order, Respondent(s) shall submit to EPA in writing the name, title, and qualifications of any supervising contractor proposed to be used in carrying out the RI/FS to be performed pursuant to this Consent Order. ~~Respondent(s) shall also advise EPA of the name, title, and qualifications of the contractor proposed to be used in carrying out the risk assessment portion of the RI/FS.~~ EPA shall notify the Respondent(s) of its approval or disapproval in writing, within twenty (20) calendar days of its receipt of this submission by the Respondent(s).

2. (Page 7)

B. EPA will perform the Baseline Risk Assessment. Respondent(s) shall support EPA in the effort by providing various information to EPA as outlined above. The major components of the Baseline Risk Assessment include contaminant identification, exposure assessment, toxicity assessment, and human health and ecological risk characterization.

EPA will provide, after review of the Respondent(s)'s site characterization summary, sufficient information concerning the risks such that Respondent(s) can begin drafting the Feasibility Study (FS) Report.

EPA will prepare a Baseline Risk Assessment Report based on the data collected by Respondent(s) during the Site Characterization. EPA will release this Report to the public at the same time it releases the final (RI) Report. Both reports will be put into the administrative record for the Site.

EPA will respond to all significant comments on the Baseline Risk Assessment that are resubmitted during the formal comment period in the Responsiveness Summary of the Record of Decision.

X. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

3. (Page 11)

A. Respondent(s) shall use quality assurance, quality control, and chain of custody procedures in accordance with EPA's "Interim Guidelines and Specifications For Preparing Quality assurance Project Plans" (QAMS-005/80) and the "EPA Region IV Engineering Support Branch Standard Operating Procedures and Quality Assurance Manual (U.S. EPA Region IV, Environmental Services Division, February 1, 1991 April 1, 1986), and subsequent amendments to such guidelines. Prior to the commencement of any monitoring project under this Consent Order, Respondent(s) shall submit for review, modification and/or approval by EPA, a Quality Assurance Project Plan ("QAPP") that is consistent with applicable guidelines. Sampling data generated consistent with the QAPP(s) shall be admissible as evidence, without objection, in any proceeding under Section XIV ~~Section XIII~~ of this Consent Order. Respondent(s) shall assure that EPA personnel or authorized representatives are allowed access to any laboratory utilized by Respondent(s) in implementing this Consent Order.

B. Respondent(s) shall make available to EPA the results of all sampling and/or tests or other data generated by Respondent(s) with respect to the implementation of this Consent Order and shall submit these results in monthly progress reports as described in Section VII.E ~~Section VII.H~~ of this Consent Order.

XVI. STIPULATED PENALTIES

4. (Page 16)

1. ~~for failure to timely submit the RI/FS Work Plan, Sampling and Analysis Plan, draft RI Report and draft FS Report as required under this Consent Order; submittal and, if necessary, modification of the draft and final RI/FS Work Plan and Sampling and Analysis Plan;~~

2. ~~for failure to timely submit any modifications requested by EPA or its representatives to the RI/FS Work Plan, Sampling and Analysis Plan, draft RI Report and draft FS Report as required under this Consent Order; and submittal and, if necessary, modification of the draft and final RI Report;~~

3. ~~submittal and, if necessary, modification of the draft and final Baseline Risk Assessment memoranda;~~

4. ~~submittal and, if necessary, modification of the draft and final FS Report; and~~

3.5- for failure to timely submit payment of oversight costs
as provide in Section XVII.†

(SIGNATURE PAGE)

5. (Page 23)

IT IS SO AGREED:

BY:

(Respondent)
(Title)

Date

IT IS SO AGREED AND ORDERED:

BY:

Donald J. Gaiyard Patrick M. Tobin
Director
Waste Management Division
Region IV
U.S. Environmental Protection Agency

Date

VERSION 2.0

INSTRUCTIONS FOR USING THE MODEL
RI/FS ADMINISTRATIVE ORDER ON CONSENT

1. Copy the model from the shared drive (the "G" drive) over to your personal drive (the "K" drive). Should you have any problems, the Branch Secretary has the Model on disk. DO NOT MODIFY THIS DOCUMENT WHILE ON THE SHARED ("G") DRIVE!
2. In consultation with the ORC Attorney and your Section Chief, make changes in the model as necessary based on the negotiations contemplated.
3. Delete the first page, spell check, and repaginate the document.
4. Attach the site-specific RI/FS Scope of Work (SOW) as developed from the Model Scope of Work listed under filename "RIFSSOW" on the shared drive to the RI/FS AOC.
5. You now have a site-specific AOC and SOW ready for routing for signature.
6. For further information, please see Branch Guidance Number 8 issued on March 21, 1990.
7. The following versions of this model AOC have been issued:

Version	Date
1.0	3/21/90
2.0	1/13/92

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

IN THE MATTER OF:

[name of site]

Respondent(s)

)
) Proceeding under Sections 104,
) 122(a) and 122(d)(3) of the
) Comprehensive Environmental
) Response, Compensation
) and Liability Act of 1980,
) as amended, 42 U.S.C.
) §§ 9604 and 9622.
)
) EPA Docket No.:
)

ADMINISTRATIVE ORDER BY CONSENT
FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY

I. JURISDICTION

This Administrative Order by Consent (Consent Order) is entered into by the United States Environmental Protection Agency (EPA) with [List Respondent(s) by Name] (Respondent(s)), pursuant to the authority vested in the President of the United States by Sections 104, 122(a) and 122(d)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. §§ 9604, 9622(a) and 9622(d)(3). This authority was delegated by the President to the Administrator of the EPA by Exec. Order No. 12580, dated January 23, 1987, 52 Fed. Reg. 2923 (Jan. 29, 1987), and was further delegated to the Regional Administrator of Region IV EPA and redelegated to the Director, Waste Management Division.

Respondent(s) agree(s) to undertake all actions required by the terms and conditions of this Consent Order for the conduct and implementation of the Remedial Investigation and Feasibility Study (RI/FS). The Respondent(s) consent(s) to and will not contest EPA jurisdiction regarding this Order.

II. PARTIES BOUND

This Consent Order shall apply to and be binding upon EPA and the Respondent(s), [its/their] agents, successors, assigns, officers, directors, and principals. Respondent(s) [is/are] jointly and severally responsible for carrying out all actions required of [it/them] by this Consent Order. The signatories to this Consent Order certify that they are authorized to execute and legally bind the parties they represent to this Consent Order. No change

in the ownership or corporate status of the Respondent(s) shall alter its responsibilities under this Consent Order.

The Respondent(s) shall provide a copy of this Consent Order to any subsequent owners or successors before ownership rights are transferred. The Respondent(s) shall provide a copy of this Consent Order to all contractors, subcontractors, laboratories, and consultants which are retained to conduct any work performed under this Consent Order, within fourteen (14) days after the effective date of this Consent Order or the date of retaining their services, whichever is later. Respondent(s) shall condition any such contracts upon satisfactory compliance with this Consent Order. Notwithstanding the terms of any contract, Respondent(s) [is/are] responsible for compliance with this Consent Order and for ensuring that [its/their] subsidiaries, employees, contractors, consultants, subcontractors and agents comply with this Consent Order.

III. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of EPA and Respondent(s) are: (A) with respect to the Remedial Investigation (RI), to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site into the environment; and (B) with respect to the Feasibility Study (FS), to develop and evaluate alternatives for remedial action to prevent, mitigate or otherwise respond to the migration or the release or threatened release of hazardous substances, pollutants, or contaminants from the Site; and (C) to recover response and oversight costs incurred by EPA with respect to this consent order.

The activities conducted pursuant to this Consent Order will be consistent with the National Contingency Plan (NCP), 40 C.F.R. Part 300, et seq., and will be subject to the express EPA approvals as set forth below.

IV. FINDINGS OF FACTS

[Provide sufficient information in this section to support the AOC and to substantiate the Conclusions of Law Section.]

The following constitutes an outline of the facts upon which this Consent Order is based:

A. [Identify the site with name, address, and description including geography and brief site history.]

- B. [Identify the Respondent(s); i.e., name/business.]
- C. [State a link between the Respondent(s) and the site; e.g., owner, operator, transporter, generator.]
- D. [Use appropriate sentence: [The _____ Site was proposed for inclusion on the National Priority List, as defined in Section 105 of CERCLA, as amended, 42 U.S.C. § 9605, in (month) (year).] or [The _____ Site was listed on the National Priority List, as defined in Section 105 of CERCLA, as amended, 42 U.S.C. § 9605, in (month) (year).]]
- E. [Identify hazardous substances which are associated with the Respondent(s) and the nature of the association.]
- F. [State specific knowledge of the presence of hazardous substances associated with the site, including sample results, if available.]
- G. [Describe the hazardous properties of the hazardous substances associated with the site.]
- H. [Describe the geology and hydrology of the site and surrounding area; including soil type, depth to ground water, ground water flow, surface water, etc.]
- I. [Describe the nature of the release (i.e. leaking drums, contaminated soils, etc.), migration pathways, and possible or known routes of exposure of the hazardous substances.]
- J. [Identify the populations at risk; both human and non-human.]
- K. [Describe the actual or potential consequences of any release or threatened release of hazardous substances from the site and include any past incidents involving such a release of hazardous substances.]
- L. [Identify prior response and/or enforcement actions, if any, taken at the Site.]

V. CONCLUSIONS OF LAW

- A. The Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- B. The [Respondent is a/Respondents are] person(s) as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- C. The Respondent(s) [is a/are] responsible party(ies)

under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

D. Contaminants found at the Site as described in Section IV above are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), or constitute a pollutant or contaminant that may present an imminent and substantial danger to the public health or welfare under Section 104(a)(1) of CERCLA, 42 U.S.C. 9604(a)(1).

E. The hazardous substances described have been released into the environment and its potential migration pathways constitute both an actual release and threatened release within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

VI. DETERMINATIONS

Based on the Findings of Fact and Conclusions of Law set out above, EPA has determined that:

A. The actual and/or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.

B. The actions required by this Consent Order are necessary to protect the public health and/or welfare and/or the environment.

C. In accordance with Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1), EPA has determined that the work to be performed pursuant to this Consent Order, if performed according to the terms of this Order, will be done properly and promptly by the Respondent(s). EPA has also determined that the Respondent(s) [is/are] qualified to conduct such work.

VII. WORK TO BE PERFORMED

All aspects of the Work to be performed by Respondent(s) pursuant to this Consent Order shall be under the direction and supervision of a qualified contractor who shall be a qualified professional engineer or geologist with expertise in hazardous site cleanup, the selection of which shall be subject to approval by EPA. Within fifteen (15) days after the effective date of this Consent Order, Respondent(s) shall submit to EPA in writing the name, title, and qualifications of any supervising contractor proposed to be used in carrying out the RI/FS to be performed pursuant to this Consent Order. ~~Respondent(s) shall also advise EPA of the name, title, and qualifications of the contractor proposed to be used in carrying out the risk assessment portion of the RI/FS.~~ EPA shall notify the Respondent(s) of its approval or disapproval in writing, within twenty (20) calendar days of

its receipt of this submission by the Respondent(s).

If EPA disapproves of the selection of any contractor, Respondent(s) shall submit a list of alternate contractors to EPA within fifteen (15) days of receipt of EPA's disapproval of the contractor previously selected. EPA shall, within twenty (20) calendar days of receipt of the list, provide written notice of the names of the contractors that it approves. The Respondent(s) may at their election select any one from that list. Respondent(s) shall notify EPA of the name of the contractor selected within fifteen (15) calendar days of EPA's notice of the approved contractors.

If, at any time thereafter, Respondent(s) propose to change any contractor, Respondent(s) shall give written notice to EPA and shall obtain approval from EPA before the new contractor performs any work under this Consent Order.

Based on the foregoing, it is hereby AGREED TO AND ORDERED that the following work will be performed:

A. Within forty-five (45) calendar days of the effective date of this Consent Order, Respondents shall submit to EPA a plan for a complete Remedial Investigation and Feasibility Study (RI/FS Work Plan). The RI/FS Work Plan shall be developed and submitted in conjunction with a Sampling and Analysis Plan and a Health and Safety Plan, although each plan may be delivered under separate cover. These plans shall be developed in accordance with the National Contingency Plan and the attached Scope of Work (SOW) (Attachment 1) which is hereby made a part of this Consent Order as if fully set forth herein. The RI/FS Work Plan shall include a comprehensive description of the work to be performed, the medias to be investigated (i.e., air, groundwater, surface water, surface and subsurface soils and sediments, etc.), the methodologies to be utilized, and the rationale for the selection of each methodology. A comprehensive schedule for completion of each major activity required by this Consent Order and including the submission of each deliverable listed in the RI/FS Scope of Work shall also be included. Such schedule shall reflect submittal of the Draft Feasibility Study within 400 calendar days of the effective date of this Consent Order.

The Sampling and Analysis Plan (SAP) shall include procedures to ensure that sample collection and analytical activities are conducted in accordance with technically acceptable protocols and that the data generated will meet the Data Quality Objectives (DQOs) established. The SAP provides a mechanism for planning field activities and consists of a Field Sampling and Analysis Plan (FSAP) and a Quality Assurance Project Plan (QAPP).

The FSAP shall define in detail the sampling and data-gathering methods that shall be used on the project. It shall include

sample objectives, sample location (horizontal and vertical) and frequency, sampling equipment and procedures, and sample handling and analysis. The QAPP shall describe the project objectives and organization, functional activities, and quality assurance and quality control (QA/QC) protocols that shall be used to achieve the desired DQOs.

A Health and Safety Plan shall be prepared in conformance with the Respondent('s/s') health and safety program and OSHA regulations and protocols.

B. EPA will perform the Baseline Risk Assessment. Respondent(s) shall support EPA in the effort by providing various information to EPA as outlined above. The major components of the Baseline Risk Assessment include contaminant identification, exposure assessment, toxicity assessment, and human health and ecological risk characterization.

EPA will provide, after review of the Respondent('s,s') site characterization summary, sufficient information concerning the risks such that Respondent(s) can begin drafting the Feasibility Study (FS) Report.

EPA will prepare a Baseline Risk Assessment Report based on the data collected by Respondent(s) during the Site Characterization. EPA will release this Report to the public at the same time it releases the final RI Report. Both reports will be put into the administrative record for the Site.

EPA will respond to all significant comments on the Baseline Risk Assessment that are resubmitted during the formal comment period in the Responsiveness Summary of the Record of Decision.

C. Respondent(s) will implement the RI/FS Work Plan approved by EPA. The EPA approved RI/FS Work Plan and any EPA approved amendments thereto will be attached to and incorporated in this Consent Order as Attachment 2. The RI/FS will be conducted in accordance with the schedule contained in the RI/FS Work Plan as approved by EPA.

D. Within seven (7) calendar days of the approval of the RI/FS Work Plan by EPA, Respondent(s) will commence work on Task 1 of the RI/FS Work Plan.

E. Respondent(s) shall submit to EPA written monthly progress reports which: (1) describe the actions which have been taken toward achieving compliance with this Consent Order during the previous month; (2) include all results of sampling and tests and all other data received by Respondent(s) during the course of the work; (3) include all plans and procedures completed under the Work Plan during the previous month; (4) describe all actions, data, and plans which are scheduled for the next month,

and provide other information relating to the progress of the work as deemed necessary by EPA; and (5) include information regarding percentage of completion, unresolved delays, encountered or anticipated, that may affect the future schedule for implementation of the Scope of Work and/or RI/FS Work Plans, and a description of efforts made to mitigate those delays or anticipated delays. These progress reports are to be submitted to EPA by the fifth day of every month following the effective date of this Consent Order.

F. Deliverables, including reports, plans or other correspondence to be submitted pursuant to this Consent Order, shall be sent by regular certified mail, express mail or overnight delivery to the following addresses or to such other

addresses as the EPA hereafter may designate in writing.

[Name]
Remedial Project Manager
EPA - Region IV
Waste Management Division
345 Courtland Street, N.E.
Atlanta, Georgia 30365

The number of copies to be submitted to EPA for each deliverable is identified in the RI/FS Scope of Work.

For informational purposes documents (two copies) shall be sent to:

[State environmental contact]

Documents to be submitted to the Respondent ('s/s') Project Coordinator should be sent to:

G. EPA may determine that other tasks, including remedial investigatory work and/or engineering evaluation, are necessary as part of an RI/FS in addition to EPA-approved tasks and

deliverables, including reports, which have been completed pursuant to this Consent Order. The Respondent(s) shall implement any additional tasks which EPA determines are necessary as part of the RI/FS and which are in addition to the tasks detailed in the RI/FS Work Plan. The additional work shall be completed in accordance with the standards, specifications, and schedule determined or approved by EPA.

VIII. SUBMISSIONS REQUIRING AGENCY APPROVAL

A. EPA reserves the right to comment on, modify and direct changes for all deliverables. Upon receipt of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Order, EPA shall either: (1) approve the submission; or (2) disapprove the submission, notifying Respondent(s) of deficiencies. If such submission is disapproved, EPA shall either: (1) notify the Respondent(s) that EPA will modify the submission to cure the deficiencies; or (2) direct the Respondent(s) to modify the submission to cure the deficiencies.

B. Upon receipt of a notice of disapproval and notification directing modification of the submission, Respondent(s) shall, within thirty (30) days, cure the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding the notice of disapproval, Respondent(s) shall proceed to take any action required by any nondeficient portion of the submission.

C. In the event of approval or modification of the submittal by EPA, Respondent(s) shall proceed to take any action required by the plan, report, or other item, as approved or modified.

D. If, upon resubmission, the plan, report, or item is not approved, Respondent(s) shall be deemed to be in violation of this Consent Order and stipulated penalties shall begin to accrue pursuant to Section XVI of this Consent Order. EPA retains the right to seek stipulated or statutory penalties, to require the amendment of the document, to perform additional studies, to conduct a complete RI/FS pursuant to its authority under CERCLA, and to take any other action, including, but not limited to, enforcement action to recover its costs pursuant to its authority under CERCLA.

E. Neither failure of EPA to expressly approve or disapprove of Respondent('s/s') deliverables within a specified time period, nor the absence of comments, shall be construed as approval by EPA. Respondent(s) [is/are] responsible for preparing and submitting deliverables acceptable to EPA.

F. Respondent(s) shall make presentations at, and

participate in, meetings at the request of EPA during the initiation, conduct and completion of the RI/FS. In addition to the discussion of the technical aspects of the RI/FS, topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion.

G. The provisions of this Consent Order shall govern all proceedings regarding the RI/FS work conducted pursuant to this Consent Order. In the event of any inconsistency between this Consent Order and any required deliverable submitted by Respondent, the inconsistency will be resolved in favor of this Consent Order.

IX. DESIGNATED PROJECT COORDINATORS

A. On or before the effective date of this Consent Order, EPA and Respondent(s) will each designate a Project Coordinator and an Alternate Project Coordinator. The "Project Coordinator" for EPA will be the Remedial Project Manager (RPM) or the On-Scene Coordinator (OSC) responsible for this Site. Each Project Coordinator will be responsible for overseeing the implementation of this Consent Order. The EPA Project Coordinator will be EPA's designated representative at the Site. To the maximum extent possible, communications between Respondent(s) and EPA, including all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Order, will be directed through the Project Coordinators.

B. EPA and Respondent(s) each have the right to change their respective Project Coordinator. Such a change will be accomplished by notifying the other party in writing at least five (5) calendar days prior to the change.

C. The EPA designated Project Coordinator will have the authority vested in an RPM or OSC by the National Contingency Plan, 40 C.F.R. Part 300, as amended. This includes the authority to halt, conduct, or direct any work required by this Consent Order, or any response actions or portions thereof when he or she determines that conditions may present an immediate risk to public health or welfare or the environment.

D. The absence of the EPA Project Coordinator from the Site shall not be cause for the stoppage or delay of work.

E. EPA shall arrange for a qualified person to assist in its oversight and review of the conduct of the RI/FS, as required by Section 104(a) of CERCLA, 42 U.S.C. 9604(a). The oversight assistant may observe work and make inquiries in the absence of EPA, but is not authorized to modify the work plan.

X. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

A. Respondent(s) shall use quality assurance, quality control, and chain of custody procedures in accordance with EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans" (QAMS-005/80) and the "EPA Region IV Engineering Support Branch Standard Operating Procedures and Quality Assurance Manual (U.S. EPA Region IV, Environmental Services Division, ~~February 1, 1991~~ April 1, 1986), and subsequent amendments to such guidelines. Prior to the commencement of any monitoring project under this Consent Order, Respondent(s) shall submit for review, modification and/or approval by EPA, a Quality Assurance Project Plan ("QAPP") that is consistent with applicable guidelines. Sampling data generated consistent with the QAPP(s) shall be admissible as evidence, without objection, in any proceeding under ~~Section XIV~~ ~~Section XIII~~ of this Consent Order. Respondent(s) shall assure that EPA personnel or authorized representatives are allowed access to any laboratory utilized by Respondent(s) in implementing this Consent Order.

B. Respondent(s) shall make available to EPA the results of all sampling and/or tests or other data generated by Respondent(s) with respect to the implementation of this Consent Order and shall submit these results in monthly progress reports as described in ~~Section VII.E.~~ ~~Section VII.H.~~ of this Consent Order.

C. At the request of EPA, Respondent(s) shall allow split or duplicate samples to be taken by EPA, and/or their authorized representative, of any samples collected by Respondent(s) pursuant to the implementation of this Consent Order. Respondent(s) shall notify EPA not less than fourteen (14) days in advance of any sample collection activity. In addition, EPA shall have the right to collect any additional samples that EPA deems necessary.

D. Respondent(s) shall ensure that the laboratory utilized by Respondent(s) for analyses participates in a EPA quality assurance/quality control program equivalent to that which is followed by EPA and which is consistent with EPA document QAMS-005/80. In addition, EPA may require submittal of data packages equivalent to those generated in the EPA Contract Laboratory Program (CLP) and may require laboratory analysis of performance samples (blank and/or spike samples) in sufficient number to determine the capabilities of the laboratory.

E. Notwithstanding any provision of this Consent Order, the EPA hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, RCRA, and any other applicable statute or regulation.

XI. ACCESS

A. From the date of execution of this Consent Order until EPA provides written notice of satisfaction of the terms of the Order, the EPA and its authorized representatives and agents shall have access at all times to the Site and any property to which access is required for the implementation of this Consent Order, to the extent access to the property is controlled by or available to Respondent(s), for the purposes of conducting any activity authorized by or related to this Consent Order, including, but not limited to:

1. Monitoring the RI/FS work or any other activities taking place on the property;
2. Verifying any data or information submitted to the United States;
3. Conducting investigations relating to contamination at or near the Site;
4. Obtaining samples;
5. Evaluating the need for or planning and implementing additional remedial or response actions at or near the Site; and
6. Inspecting and copying records, operating logs, contracts, or other documents required to assess Respondent(s/s') compliance with this Consent Order.

B. To the extent that the Site or any other area where work is to be performed under this Consent Order is owned or controlled by persons other than Respondent(s), Respondent(s) shall secure from such persons access for Respondent(s), as well as for EPA and authorized representatives or agents of EPA, as necessary to effectuate this Consent Order. Copies of such access agreements will be provided to EPA prior to Respondent(s/s') initiation of field activities. If access is not obtained within thirty (30) days of the effective date of this Consent Order, Respondent(s) shall promptly notify the EPA. The United States may thereafter assist Respondent(s) in obtaining access. Respondent(s) shall, in accordance with Section XVII herein, reimburse the United States for all costs incurred by it in obtaining access, including but not limited to, attorneys' fees and the amount of just compensation and costs incurred by the United States in obtaining access.

C. Notwithstanding any provision of this Consent Order, the EPA retains all of its access authorities and rights under CERCLA, RCRA and any other applicable statute or regulations.

XII. CONFIDENTIALITY OF SUBMISSIONS

A. Respondent(s) may assert a confidentiality claim, if appropriate, covering part or all of the information requested by this Consent Order pursuant to 40 C.F.R. § 2.203(b). Such an assertion will be adequately substantiated when the assertion is made. Analytical data will not be claimed as confidential by Respondent(s). Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to Respondent(s).

B. Respondent(s) [waive/waives] any objection to the admissibility into evidence (without waiving any objection as to weight) of the results of any analyses of sampling conducted by or for them at the Site or of other data gathered pursuant to this Consent Order that has been verified by the quality assurance/quality control procedures established pursuant to Section X.

XIII. RECORD PRESERVATION

EPA and Respondent(s) agree that each will preserve, during the pendency of this Consent Order and for a minimum of six (6) years after its termination, all records and documents in their possession or in the possession of their divisions, employees, agents, accountants, contractors, or attorneys which relate in any way to the Site, despite any document retention policy to the contrary. After this six year period, Respondent(s) will notify EPA within ninety (90) calendar days prior to the destruction of any such documents. Upon request by EPA, Respondent(s) will make available to EPA such records or copies of any such records. Additionally, if EPA requests that documents be preserved for a longer period of time, Respondent(s) will comply with that request.

XIV. DISPUTE RESOLUTION

Any disputes arising under this Consent Order shall be resolved as follows: If the Respondent(s) [object/objects] to any EPA notice of disapproval or decision made pursuant to this Consent Order, the Respondent(s) shall notify EPA's Project Coordinator in writing of [its/their] objections within 14 calendar days after receipt of the decision. Respondent('s/s') written objections shall define the dispute, state the basis of Respondent('s/s') objections, and be sent certified mail, return receipt requested. EPA and the Respondent(s) then have an additional fourteen (14) calendar days to reach agreement. If agreement cannot be reached within fourteen (14) calendar day

period, the EPA Waste Management Division Director shall provide a written statement of the decision and the reasons supporting that decision to Respondent(s). The Division Director's determination is EPA's final decision. If Respondent(s) [does/do not] agree to perform or does not actually perform the task in dispute as determined by EPA's Division Director, EPA reserves the right to conduct the work itself, to seek reimbursement from the Respondent(s), and/or to seek other appropriate relief.

Respondent(s) [is/are] not relieved of [its/their] obligations to perform and conduct any work required by this Consent Order while a matter is pending in dispute resolution.

XV. FORCE MAJEURE

A. "Force Majeure" is defined for the purposes of the Consent Order as an event arising from causes entirely beyond the control of Respondent(s) and of any entity controlled by Respondent(s) including [its/their] contractors and subcontractors, which could not have been overcome by due diligence which delays or prevents the performance of any obligation under this Consent Order. Examples of events which may constitute force majeure events include extraordinary weather events, natural disasters, and national emergencies. Examples of events that are not force majeure events include, but are not limited to, normal inclement weather, increased costs or expenses of the Work to be performed under this Consent Order, the financial difficulty of Respondent(s) to perform such tasks, the failure of one or more of Respondent(s) to satisfy their obligation under this Consent Order, acts or omissions not otherwise force majeure attributable to Respondent('s/s') contractors or representatives, and the failure of Respondent(s) or Respondent('s/s') contractors or representatives to make complete and timely application for any required approval or permit.

B. When circumstances occur which may delay or prevent the completion of any phase of the Work Plan or access to the Site or to any property on which part of the Work Plan is to be performed, whether or not caused by a force majeure event, Respondent(s) shall notify the EPA Project Coordinator orally of the circumstances within forty-eight (48) hours of when Respondent(s) first knew or should have known that the event might cause delay. If the EPA Project Coordinator is unavailable, Respondent(s) shall notify the designated alternate or the Director of the Waste Management Division, EPA Region IV. Within seven (7) calendar days after Respondent(s) first became aware of such circumstances, Respondent(s) shall supply to EPA in writing: (1) the reasons for the delay; (2) the anticipated duration of the delay; (3) all actions taken or to be taken to prevent or minimize the delay; (4) a schedule for implementation

of any measures to be taken to mitigate the effect of the delay; and (5) a statement as to whether, in the opinion of the Respondent(s), such event may cause or contribute to an endangerment to public health, welfare, or the environment. Respondent(s) shall exercise best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply with the above requirements shall preclude Respondent(s) from asserting any claim of force majeure.

C. If EPA agrees that a delay is or was caused by a force majeure event, the time for performance of the obligations under this Consent Order that are directly affected by the force majeure event shall be extended by agreement of the parties, pursuant to Section XXIII, for a period of time not to exceed the actual duration of the delay caused by the force majeure event. An extension of the time for performance of the obligation directly affected by the force majeure event shall not necessarily justify an extension of time for performance of any subsequent obligation.

D. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, or does not agree with Respondent(s) on the length of the extension, the issue shall be subject to the dispute resolution procedures set forth in Section XIV of the Consent Order. In any such proceedings, to qualify for a force majeure defense, Respondent(s) shall have the burden of proof that the delay or anticipated delay was or will be caused by a force majeure event, that the duration of the delay was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent(s) complied with the requirements of paragraph B of this Section. Should Respondent(s) carry this burden, the delay at issue shall be deemed not to be a violation by Respondent(s) of the affected obligation of the Consent Order.

XVI. STIPULATED PENALTIES

Unless excused under the provisions of Sections XIV or XV, the Respondent(s) shall pay into the Hazardous Substance Superfund administered by EPA, the sums set forth below as stipulated penalties.

Stipulated penalties shall accrue as follows:

A. For each day during which Respondent(s) [fail/fails] to perform, in accordance with the schedules contained in this Consent Order and in the various plans and reports required under this Consent Order incorporated by reference herein, any of the following activities:

1. ~~for failure to timely submit the RI/FS Work Plan, Sampling and Analysis Plan, draft RI Report and draft FS Report required under this Consent Order; submittal and, if necessary, modification of the draft and final RI/FS Work Plan and Sampling and Analysis Plan,~~

2. ~~for failure to timely submit any modifications requested by EPA or its representatives to the RI/FS Work Plan, Sampling and Analysis Plan, draft RI Report and draft FS Report as required under this Consent Order; and submittal and, if necessary, modification of the draft and final RI Report,~~

3. ~~submittal and, if necessary, modification of the draft and final Baseline Risk Assessment memoranda,~~

4. ~~submittal and, if necessary, modification of the draft and final FS Report; and~~

3.5. ~~for failure to timely submit~~ payment of oversight costs as provided in Section XVII.†

Respondent(s) shall be liable to EPA for stipulated penalties in the following amounts:

<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 14th day	\$2,500
15th through 44th day	\$5,000
45th day and beyond	\$10,000

B. If Respondent(s) fail to submit a monthly progress report by its due date, Respondent(s) shall be liable to EPA for stipulated penalties in the amount of \$1000 per violation for each day during which Respondents fail to submit and, if necessary, modify monthly reports.

C. Respondent(s) shall be liable to EPA for stipulated penalties in the amount of \$1000 per violation for each day during which Respondent(s) fail to comply with all other requirements of this Consent Order including, but not limited to, any implementation schedule, payment requirement, notification requirement or completion deadline.

All stipulated penalties begin to accrue on the day the violation occurs or on the day following Respondent('s/s') failure to comply with any schedule or deadline or the terms, conditions, or requirements contained in this Consent Order and/or Work Plan. Stipulated penalties shall continue to accrue until Respondent('s/s') violation ends or until Respondent(s) comply with the particular schedule or deadline.

Payment of stipulated penalties shall be due and owing within

fifteen (15) days from the receipt of a written notice from EPA notifying Respondent(s) that penalties have been assessed. Interest shall accrue on any unpaid amounts, beginning at the end of the fifteen day period, at the rate established by the Department of Treasury under 31 U.S.C. § 3717. Respondent(s) shall pay a handling charge of one percent to be assessed at the end of each 31 day period, and a six percent per annum penalty charge, to be assessed if the penalty is not paid in full within 90 days after it is due. The check and transmitted letter shall identify the Name of the Site, the Site identification number and the title of this Order. A copy of the transmittal letter should be sent simultaneously to the EPA Project Coordinator.

Payment shall be made to:

U. S. Environmental Protection Agency
Region IV
Superfund Accounting
P. O. Box 100142
Atlanta, Georgia 30384
ATTENTION: (Collection Officer for Superfund)

Respondent(s) may dispute EPA's right to the stated amount of penalties by invoking the Dispute Resolution procedures under Section XIV of this Order. Penalties shall accrue but need not be paid during the dispute resolution period. If Respondent(s) [does/do] not prevail upon resolution, all penalties shall be due to EPA within 30 days of resolution of the dispute. If Respondent(s) prevails upon resolution, no penalties shall be paid.

In the event that EPA provides for corrections to be reflected in the next deliverable and does not require resubmission of that deliverable, stipulated penalties for that interim deliverable shall cease to accrue on the date of such decision by EPA.

Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Order.

The stipulated penalties set forth in this Section do not preclude EPA from electing to pursue any other remedies or sanctions which may be available to EPA by reason of the Respondent(s/s') failure to comply with any of the requirements of this Consent Order. Such remedies and sanctions may include a suit for statutory penalties up to the amount authorized by law, a federally-funded response action, and a suit for reimbursement of costs incurred by the United States.

XVII. REIMBURSEMENT OF OVERSIGHT AND RESPONSE COSTS

In accordance with Section 104(a)(1) of CERCLA, as amended, 42 U.S.C. § 9604(a)(1), Respondent(s) agree(s) to reimburse the Hazardous Substance Superfund for all response and oversight costs incurred by EPA or its authorized representatives in oversight of Respondent('s/s') performance of work under the Consent Order.

At the end of each fiscal year, EPA will submit to Respondent(s) an accounting of all response and oversight costs incurred by the U.S. Government with respect to this Consent Order. Oversight costs shall include all direct and indirect costs of EPA's oversight arrangement for the RI/FS, including, but not limited to, time and travel costs of EPA personnel and associated indirect costs, contractor costs, compliance monitoring, including the collection and analysis of split samples, inspection of RI/FS activities, site visits, interpretation of Consent Order provisions, discussions regarding disputes that may arise as a result of this Consent Order, review and approval or disapproval of reports, the costs of redoing any of Respondent(s) tasks, and any assessed interest.

EPA's certified Agency Financial Management System Summary data (SPUR Reports) and any other necessary documents, shall serve as the basis for payment demands.

Failure to submit an accounting in one fiscal year does not prevent EPA from submitting an accounting for that year in a subsequent fiscal year. Respondent(s) shall, within thirty (30) calendar days of receipt of each accounting, remit a certified or cashiers check for the amount of those costs made payable to the Hazardous Substance Superfund. Interest shall begin to accrue on the unpaid balance from that date. Checks should specifically reference the identity of the Site and should be sent to:

U. S. Environmental Protection Agency
Region IV
Superfund Accounting
P. O. Box 100142
Atlanta, Georgia 30384
ATTENTION: Collection Officer for Superfund

A copy of the transmittal letter should be sent simultaneously to the EPA Project Coordinator.

Respondent(s) agrees to limit any disputes concerning costs to accounting errors and the inclusion of costs outside the scope of this Consent Order. Respondent(s) shall identify any contested costs and the basis of its objection. All undisputed costs shall be remitted by Respondent(s) in accordance with the schedule set out above. Disputed costs shall be paid by Respondent(s) into an

escrow account while the dispute is pending. Respondent(s) bears the burden of establishing an EPA accounting error and the inclusion of costs outside the scope of this Consent Order.

EPA reserves the right to bring an action against the Respondent(s) pursuant to Section 107 of CERCLA to enforce the response and oversight cost reimbursement requirements of this Consent Order and to collect stipulated penalties assessed pursuant to section XVI of this Consent Order.

XVIII. RESERVATION OF RIGHTS

Notwithstanding compliance with the terms of this Consent Order, the Respondent(s) [is/are] not released from liability, if any, for any actions beyond the terms of this Consent Order taken by EPA regarding this Site. EPA reserves the right to take any enforcement action pursuant to CERCLA or any other available legal authority, including the right to seek injunctive relief, monetary penalties, and punitive damages for any violation of law or this Consent Order.

Except as otherwise provided herein, EPA and Respondent(s) expressly reserve all rights and defenses that they may have, including EPA's right both to disapprove of work performed by Respondent(s) and to require that Respondent(s) perform tasks in addition to those detailed in the RI/FS Work Plan, as provided in this Consent Order. In the event that Respondent(s) decline(s) to perform any additional or modified tasks, EPA will have the right to undertake any RI/FS work. In addition, EPA reserves the right to undertake removal actions and/or remedial actions at any time. In either event, EPA reserves the right to seek reimbursement from Respondent(s) thereafter for such costs which are incurred by the United States and Respondent(s) reserve(s) all rights to contest or defend against such claims or actions.

Following satisfaction of the requirements of this Consent Order, Respondent(s) shall have resolved its liability to EPA for the performance of the RI/FS that is the subject of this Order. The Respondent(s) [is/are] not released from liability, if any, for any actions taken beyond the terms of this Order regarding removals, other operable units, remedial design/remedial action (RD/RA), or activities arising pursuant to section 121(c) of CERCLA.

XIX. OTHER CLAIMS

Nothing in this Consent Order constitutes a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation,

storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

EPA reserves the right to bring an action against the Respondent(s) pursuant to Section 107 of CERCLA for recovery of all response and oversight costs incurred by the United States related to this Consent Order and not reimbursed by Respondent(s), as well as any other past and future costs incurred by the United States in connection with response activities conducted pursuant to CERCLA at this site.

This Consent Order does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

In entering into this Consent Order, Respondent(s) waive(s) any right to seek reimbursement under Section 106(b)(2) of CERCLA, 42 U.S.C. § 9606(b)(2), for any past costs associated with this Site, or any costs incurred in complying with this Order.

Respondent(s) shall bear [its/their] own costs and attorney fees.

XX. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Consent Order will be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations unless an exemption from such requirements is specifically provided in this Consent Order, or made a part of this Consent Order by being incorporated herein at some later date.

XXI. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

Respondent(s) agree(s) to indemnify and save and hold harmless the United States, its agencies, departments, officials, agents, employees, contractors, or representative, from any and all claims or causes of action arising from or on account of acts or omissions of Respondent(s), [its/their] officers, employees, receivers, trustees, agents, or assigns, in carrying out the activities pursuant to this Consent Order. The United States Government or any agency or authorized representative thereof shall not be held to be a party to any contract involving Respondent(s) at or relating to the Site.

XXII. PUBLIC COMMENT

Upon submittal to EPA of the Feasibility Study Final Report, EPA will make both the Remedial Investigation Final Report and the

Feasibility Study Final Report and EPA's Proposed Plan available to the public for review and comment for, at a minimum, a thirty (30) day period, pursuant to EPA's Community Relations Plan and the NCP. Following the public review and comment period, EPA will notify Respondent(s) of the remedial action alternative selected for the Site.

XXIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

In consideration of the communications between Respondent(s) and EPA prior to the issuance of this Consent Order concerning its terms, Respondent(s) agree(s) that there is no need for a settlement conference prior to the effective date of this Consent Order. Therefore, the effective date of this Consent Order will be the date on which it is signed by EPA. This Consent Order may be amended by mutual agreement of EPA and Respondent(s). Such amendments will be in writing and will have, as the effective date, that date on which such amendments are signed by EPA. EPA Project Coordinators do not have the authority to sign amendments to the Consent Order.

Any reports, plans, specifications, schedules, and attachments required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Any noncompliance with such EPA approved reports, plans, specifications, schedules, and attachments will be considered a failure to achieve the requirements of this Consent Order and will subject the Respondent to the provisions included in the "Force Majeure" and "Stipulated Penalties" sections (Sections XV and XVI) of this Consent Order.

No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondent(s) will be construed as relieving Respondent(s) of [its/theirs] obligation to obtain such formal approval of EPA as may be required by this Consent Order.

XXIV. NOTICE TO THE STATE

EPA has notified the State of [name of state] regarding the requirements of this Consent Order.

Upon completion of the RI/FS, pursuant to the requirements of Section 104(c)(2) of CERCLA, 42 U.S.C. § 9604(c)(2), EPA will notify the State of [name of state] before determining the appropriate remedial action to be taken at the Site.

XXV. TERMINATION AND SATISFACTION

This Consent Order shall terminate when the Respondent(s) demonstrate(s) in writing and certifies to the satisfaction of EPA that all activities required under this Consent Order, including any additional work, payment of past costs, response and oversight costs, and any stipulated penalties demanded by EPA, have been performed and EPA has approved the certification. This notice shall not, however, terminate Respondent('s/s') obligation to comply with Sections XIII, XVII, and XVIII of this Consent Order.

The certification shall be signed by a responsible official representing each Respondent. Each representative shall make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate, and complete." For purposes of this Consent Order, a responsible official is a corporate official who is in charge of a principal business function.

IT IS SO AGREED:

BY: _____
(Respondent)
(Title)

Date

IT IS SO AGREED AND ORDERED:

BY: _____
Donald J. Guinyard Patrick M. Tobin
Director
Waste Management Division
Region IV
U.S. Environmental Protection Agency

Date